

E-Mail Request for Emergency Relief

1. Case Number: 05-cv-356-SLR

2. Check the box that applies:

- ☒ Requesting a teleconference with the parties and the court
☐ Requesting an in-person conference with the parties and the court
☐ Requesting either of the above listed options at the court's determination

3. BRIEFLY describe the reason for this emergency request:

Dear Chief Judge Robinson:

At the April 18, 2007 Pretrial Conference, the parties argued to the Court about the propriety of Defendant Barr's plan to obtain a "trial deposition" from an Austrian citizen, Michael Rainer, who Barr did not specifically and formally identify as a witness during discovery (on alleged level of skill or any other topic). The Court requested that the parties submit briefing on this question on April 25, 2007. The very next day, and without waiting for the Court to resolve this dispute, Barr served a deposition notice setting Rainer's deposition for May 14, 2007 in Austria. Plaintiffs seek a protective order that until this Court rules, the Rainer deposition should not proceed, and then if at all, only in accordance with the Court's rules and guidelines.

*Any text added beyond the limits of this space will be disregarded by the court.

4. Name of opposing counsel contacted about this request: Taras Gracey, Esq.

5. Response of opposing counsel to this request:

Counsel for Plaintiffs have corresponded with opposing counsel regarding this requested relief, and Barr has not responded.

6. Name of local counsel making this request: John Day, Esq.

7. Today's Date: May 9, 2007

For court use only:

- ☐ A teleconference will be held on _____ to be coordinated and initiated by _____
☐ An in-person discovery conference will be held on: _____
☒ Other:

In reviewing the submissions, the Court finds that both Dr. Rainer and the relevance of his testimony to the defense of obviousness were sufficiently identified during the course of discovery to justify the deposition scheduled for Monday. Therefore, plaintiff's motion for protective order is denied.

Opposing Counsel's Response to E-Mail Request for Emergency Relief

1. Case Number: 05 -cv- 356 -SLR
2. BRIEFLY state your response to the **emergency** request made by opposing counsel:

Dear Chief Judge Robinson,

Nearly 2 weeks ago we issued a notice of Dr. Rainer's trial deposition to occur in Vienna, Austria on May 14. We offered May 4 as an alternative date, which Plaintiffs rejected. Defendants felt the need to schedule the deposition as soon as possible to give enough notice and dates to Plaintiffs. We did so while awaiting for a ruling from the Court. We felt the proper course to take was not to postpone the deposition. If the Court sustains Plaintiffs' objections, then Dr. Rainer's testimony will not be admitted at trial. If the deposition is postponed and the Court ultimately rules that Defendants are entitled to the evidence, Plaintiffs undoubtedly will use the fact that the deposition has not yet occurred to argue yet again that the trial date should be continued. Plaintiffs' motion should be denied and the deposition should proceed.

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3. Name of local counsel submitting this response: John C. Phillips, Jr.
4. Today's Date: May 9, 2007

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3. BRIEFLY describe the reason for this **emergency** request:

Over two weeks ago, Defendants sent Plaintiffs a notice of deposition of Dr. Rainer, scheduled to occur this coming Monday, May 14, 2007 in Vienna, Austria. Defendants offered to take the deposition by videoteleconference to accommodate Plaintiffs. On Wednesday of this week, Plaintiffs filed an emergency motion regarding the deposition and have claimed to Defendants that this motion stays the deposition under Local Rule 30.2. It is Defendants' view that Plaintiffs' motion was not timely filed under the rule and therefore the deposition is not stayed. Of course, if the Court orders today that the deposition not go forward, Defendants will not proceed. Defendants are available at any time today to discuss this matter with the Court.

*Any text added beyond the limits of this space will be disregarded by the court.

4. Name of opposing counsel contacted about this request: Kurt Calia, Esq.

5. Response of opposing counsel to this request:

Opposing counsel asserts that the deposition is stayed and is refusing to attend.

6. Name of local counsel making this request: John C. Phillips, Jr.

7. Today's Date: May 11, 2007

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initiated by _____
- ☐ An in-person discovery conference will be held on: _____
- ☐ Other: _____